

## **BEFORE THE DIVISION OF INSURANCE**

### **STATE OF COLORADO**

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#### **FINAL AGENCY ORDER O-05-242**

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#### **IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FIREMAN'S FUND INSURANCE COMPANY,**

#### **Respondent**

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**THIS MATTER** comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Fireman's Fund Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated October 7, 2004 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

#### **FINDINGS OF FACT**

1. At all relevant times, the Respondent was a corporation licensed by the Division to conduct all lines of property and casualty insurance.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on October 7, 2004, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2003 to December 31, 2003.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.
5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the

Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.

6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, any and all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

### **CONCLUSIONS OF LAW AND ORDER**

8. Unless expressly modified in this Final Agency Order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Certification and use of some non-complying forms. The Respondent shall provide documentation demonstrating that it has corrected its procedures to ensure that all certified forms used by Respondent are in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue B concerns the following violation: Failure to maintain records required for market conduct purposes. The Respondent shall provide documentation demonstrating that it has corrected its procedures to maintain records required for market conduct purposes to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue C concerns the following violation: Failure, in some cases, to send notice of premium increase letters when policies were subject to a surcharge. The Respondent shall provide documentation that it has corrected its procedures to send notice of premium increase letters when policies are subject to a surcharge to ensure compliance with Colorado insurance law.
12. Issue D concerns the following violation: Failure, in some cases, to provide a clear and specific reason for non-renewal of a private passenger auto policy. The Respondent shall provide documentation that it has corrected procedures to provide a clear and specific reason for non-renewal of private passenger auto policies to ensure compliance with Colorado insurance law.

13. Issue E concerns the following violation: Failure to use a complying notice when converting policies from No-Fault to Tort. The Respondent shall provide documentation demonstrating that it has corrected its procedures to use a complying notice to insureds when converting policies from No-Fault Auto to the Tort System to ensure compliance with Colorado insurance law.
14. Issue F concerns the following violation: Failure to send required notice of change when renewing policies from No-Fault to Tort. The Respondent shall provide documentation demonstrating that it has corrected its procedures to send a required notice of change when renewing policies from No-Fault Auto to the Tort System to ensure compliance with Colorado insurance law.
15. Issue G concerns the following violation: Failure, in some cases, to offer a named driver exclusion. The Respondent shall provide documentation demonstrating that it has corrected its procedures to include, in some cases, a required named driver exclusion in policies to ensure compliance with Colorado insurance law.
16. Issue H concerns the following violation: Failure, in some cases, to timely pay PIP benefits. The Respondent shall provide documentation demonstrating that it has reviewed all procedures related to the timeliness of claims handling of PIP benefits and has implemented all necessary changes to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
17. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of eight thousand five hundred and 00/100 dollars (\$8,500.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
18. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.
19. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self audits, if any, shall be performed in accordance with the Division's document, 'Guidelines for Self Audits Performed by Companies' presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all self-audit reports must be received within ninety (90)

days of the Order, including a summary of the findings and all monetary payments to covered persons.

20. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions as provided for by law.
21. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

**WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the Report dated October 7, 2004, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 6th day of June, 2005.

A handwritten signature in black ink, appearing to read 'Dc7R', is written above a horizontal line.

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David F. Rivera  
Commissioner of Insurance

CERTIFICATE OF CERTIFIED MAILING

I hereby certify that on the 6<sup>th</sup> day of June, 2005, I caused to be deposited the **FINAL AGENCY ORDER No. O-05-242 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FIREMAN'S FUND INSURANCE COMPANY**, in the United States mail via certified mailing with proper postage affixed and addressed to:

Mr. Charles M. Kavitsky, President  
Fireman's Fund Insurance Company  
777 San Marin Drive  
Novato, CA 94998-1000

Kelly Rodriguez  
Fireman's Fund Insurance Company  
777 San Marin Drive  
Novato, CA 94998-1000



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Dolores Arrington, MA, AIRC, ACS  
Market Conduct Section  
Division of Insurance